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LOCATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/049,927 03/30/98 ARNAUD

P. 2350-60

HM12/0713

EXAMINER

HUANG, E

ART UNIT

PAPER NUMBER

1625

DATE MAILED:

07/13/00

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se find below and/or attached an Office communication concerning this application or  
eeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/049,927**

Applicant(s)  
**Arnaud**

Examiner  
**Evelyn Huang**

Group Art Unit  
**1625**



☒ Responsive to communication(s) filed on Apr 28, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 13-37 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 13-37 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. 13-37 are pending.
2. The 112 first paragraph rejection for claims 13-37 is maintained for reasons of record. Applicant's argument traversing the rejection has been fully considered but is deemed not persuasive.

Applicant contends that from the whole of the specification that the wax is used as a 'solidifying agent' as recited on page 1, lines 13-16, which states that 'the anhydrous composition intended for topical application are normally solid or viscous compositions which require, for said application, the presence of waxes, such as natural or paraffin wax' and on page 5, lines 5-8, "according to a preferred embodiment of the compositions according to the invention, the wax used as previously specified is chosen from among ethylene homopolymers, ethylene propylene copolymers, and ethylene-hexane copolymers' and examples of lipsticks containing polyethylene are found on pages 14-15 (Examples 3, 4). These descriptions teach that the composition may be in a solid form (such as a lipstick) and polyethylene, among others, is one of the preferred wax. Indeed, applicant also describes an example of oily gel is found on page 11 (Example 1) and has expressly taught that 'the compositions according to the invention may further contain charges, that is, solid compounds in powder form' (page 9, lines 5-10) that give the composition the solid form. Further, the lipstick of Example 3 also contains microcrystalline wax. The inventive concept of using polyethylene as a solidifying agent is not disclosed in the specification when viewed as a whole.

Applicant argues that the court held that an inherent disclosure of a property or structure may be demonstrated by an affidavit, from another, which reports the results developed after the filing date. In re Magerlein, 145 USPQ 683. However, solidifying activity is not an inherent property of polyethylene in general as seen in Applicant's Example 1, an oily gel that contains polyethylene. Applicant's make up foundation (Example 2) and lipstick (Example 3) contains polyethylene (PEW 1555) and further contain microcrystalline wax.

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3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn Huang whose telephone number is (703) 305-7247.

  
EVELYN MEI HUANG  
PRIMARY EXAMINER

July 11, 2000